

William A. Hector (SBN 298490)  
Email: wahector@venable.com  
VENABLE LLP  
101 California St, Suite 3800  
San Francisco, Ca 94111  
415.653.3738

Frank C. Cimino, Jr. (*pro hac vice*)  
Email: fccimino@venable.com  
Megan S. Woodworth (*pro hac* forthcoming)  
Email: mswoodworth@venable.Com  
VENABLE LLP  
600 Massachusetts Avenue, NW  
Washington, DC 20001  
202.344.4569

Robert E. Bugg (*pro hac* forthcoming)  
Email: rebugg@venable.com  
VENABLE LLP  
151 West 42nd Street  
New York, NY 10036  
212.370.6241

Attorneys for Non-Party  
WARDELL STEPHEN CURRY II

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ATHALONZ, LLC

Plaintiff,

v.

UNDER ARMOUR, INC.

Defendant.

Case No. 3:23-mc-80324-LJC

**NON-PARTY WARDELL STEPHEN  
CURRY II'S RESPONSE TO  
PLAINTIFF'S NOTICE REGARDING  
STEPHEN CURRY SUBPOENA AND  
REQUEST FOR EXPEDITED RELIEF**

1 The events Athalonz identified in its Motion do not support its arguments in its Motion  
 2 for De Novo Review, and its request for expedited relief is unjustified. First, Athalonz has  
 3 already identified both events in submissions to this Court. *See* Athalonz’s Motion for Leave to  
 4 File a Supplemental Brief (Dkt. 28), Statement of Recent Decision (Dkt. 35). And as Mr. Curry  
 5 has explained, the evidence Under Armour produced in response to a recent interrogatory does  
 6 not undercut any of Magistrate Judge Cisneros’ findings in granting the Motion to Quash. *See*  
 7 Opposition, Dkt. 31 at 1-4. Nor does the discovery order from Judge Gilstrap referenced in Dkt.  
 8 35, which compels Under Armour to produce sponsored athletes’ contracts and documents  
 9 pertaining to their involvement in the design of the accused shoes. Nothing here changes the fact  
 10 that all evidence supports Mr. Curry’s lack of involvement with the alleged “athletic positioning”  
 11 aspects of the accused shoes’ soles. *See* Dkt. 31 at 2-3.

12 One recent event that *is* relevant is District Judge Ho’s issuance of an Order granting  
 13 non-party Bryce Harper’s Motion to Quash a similarly-scoped subpoena in the Southern District  
 14 of New York, as described in Dkt. 33. In direct support of Judge Cisneros’ Order, Judge Ho  
 15 found that Bryce Harper—a similarly-situated Under Armour sponsored athlete—lacked  
 16 “relevant knowledge about the patent infringement dispute at issue,” that Athalonz must first  
 17 seek discovery from Under Armour, and “[e]ven if the Court were to find for Athalonz on  
 18 relevance, Harper has successfully demonstrated that the Subpoena would be unduly  
 19 burdensome.” Dkt 33-1 at 6.

20 Athalonz’s suggestions that Mr. Curry is “presumably available” for a deposition now is  
 21 mistaken. Mr. Curry was recently selected to be part of the United States National Basketball  
 22 Team and will be representing the United States at the 2024 Summer Olympic games in Paris,  
 23 with extensive commitments that include travel, practice, appearances and games that extend  
 24 through August 2024. In addition, Mr. Curry has ongoing endorsement, sponsorship and charity  
 25 commitments, as explained in Mr. Curry’s Motion to Quash. Dkt. 1 at 11. Even in the NBA  
 26 offseason, the requested deposition of Mr. Curry is unduly burdensome, especially when  
 27 weighed against the limited value of the information sought. *Id.* at 10-13; *see also Under*  
 28 *Armour, Inc. v. Battle Fashions, Inc.*, No. 18-mc-80117-LB, 2018 U.S. Dist. LEXIS 130983

1 (granting motion to quash subpoena to Mr. Curry served during the NBA offseason).

2  
3 Dated: May 6, 2024

VENABLE LLP

4 By: /s/ William Hector  
5 William A. Hector (SBN 298490)  
6 Frank C. Cimino, Jr. (*pro hac vice*)  
7 Megan S. Woodworth (*pro hac forthcoming*)  
8 Robert E. Bugg (*pro hac forthcoming*)

9  
10 Attorneys for Non-Party  
11 WARDELL STEPHEN CURRY II  
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